

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**

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June 17, 2005

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS****Adoption of Narcotic Treatment Program (NTP) Regulations  
Sections 10056 and 10057, Title 9, California Code of Regulations****NTP LICENSING FEES****Notice of Rulemaking and Public Comment Period**

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs proposes to adopt new NTP regulations Sections 10056 and 10057, Title 9, California Code of Regulations (CCR).

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

Chapter 4, Division 4, Title 9, CCR, currently contains regulations for licensure of NTP programs, which provide replacement narcotic therapy to individuals, under medical supervision, to order to treat opiate addiction. This regulatory action amends Chapter 4 by adopting Sections 10056 and 10057, Chapter 4, Title 9, CCR.

**Section 10056.**

Section 10056 allows ADP to assess annual licensing fees for NTPs to cover the cost of licensing NTPs. The regulation:

- Establishes standards for computing and assessing annual license fees,
- Allows the ADP to increase licensing fees annually as needed to cover the cost of licensure; and
- Authorizes assessment of civil penalties for failure to pay annual licensing fees.

Because ADP has not increased licensing fees since 1994-95, licensing fees collected have not covered the Department's actual cost of licensing NTPs. Accordingly Section 10056 allows ADP to increase licensing fees to make up for this loss. To ease the burden on NTP providers, the cumulative amount of lost revenue has been



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prorated over the next three fiscal years, with one third of the cumulative total added to licensing fees for FY 2006-07, 2007-08, and 2008-09. Section 10056 includes computations showing how licensing fees will be increased, and how this prorated amount will be added to the annual licensing fee for FY 2006-07, 2007-08, and 2008-09.

#### Section 10057.

Section 10057 establishes standards for administrative review of licensing actions, including civil penalties assessed for failure to pay licensing fees. Section 10057 specifies how to request an administrative review of licensing actions, and provides for both an informal level of appeal and a formal administrative review, in order to provide due process.

#### **AUTHORITY:**

These regulations are being adopted pursuant to Sections 11755, 11835, and 11839.20 of the Health and Safety Code.

#### **REFERENCE:**

The statutory references for this regulatory action are Sections 11839.3, 11839.5, 11839.7, 11839.10, and 11839.12 of the Health and Safety Code, and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

#### **FISCAL IMPACT STATEMENTS:**

The Department does not anticipate any cost associated with implementation of these regulations because the regulations do not expand the scope of the implementing statutes. Any costs would be associated with implementation of the statutes rather than with implementation of the regulations themselves.

Costs or Savings in Federal Funding to the State: No costs or savings are anticipated.

Costs or Savings to Any State Agency: None. Workload will be absorbed using existing resources.

Costs or Savings to Any Local Agency or School District: No costs or savings are anticipated.

Nondiscretionary Costs or Savings Imposed on Local Agencies: This regulatory action will not result in any nondiscretionary costs or savings to local agencies.

Local Mandate Determination: The Department has determined that this regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Business: The Department does not anticipate any adverse economic impact on business because these regulations do not expand the scope of the implementing legislation.

The Department has made an initial determination that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. This regulatory action will not affect the ability of California businesses to compete with businesses in other states. This regulatory action will not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Effect on Small Businesses: The proposed regulatory action will affect small businesses because many NTP programs are small businesses as defined in Government Code Section 11342.610. The Department has determined that this regulatory action will result in no cost or savings to small businesses because the regulations do not expand the scope of the implementing statutes.

Effect on Housing Costs: This regulatory action will not affect housing costs in any way.

#### **WRITTEN COMMENT PERIOD:**

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on August 1, 2005.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at [MCONWAY@ADP.STATE.CA.US](mailto:MCONWAY@ADP.STATE.CA.US).

#### **SCOPE OF TESTIMONY:**

Section 11346.8(c) of the Government Code prohibits the Department from making any changes to the text of a noticed regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since the Department cannot make changes to sections of regulation which were not mentioned in this public notice, during the public comment period the Department will not consider testimony regarding changes which are outside the scope of this notice.

If you wish to request the Department to amend, adopt, or repeal additional sections of regulation, the Department is required to consider those changes in a separate regulatory action.

### **PUBLIC HEARING:**

The Department has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, the Department will schedule a public hearing upon receipt of that person's written request. Such request must be received at the address shown above no later than 15 days prior to the close of the written comment period.

### **CONSIDERATION OF ALTERNATIVES:**

Pursuant to Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action was taken. The Department must also determine that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. The Department will consider any alternatives presented during the public comment period.

### **ADDITIONAL CHANGES:**

The Department may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. The Department will make available to any interested persons, for at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation, the full text of any regulation which is changed or modified from the express terms to this regulatory action. The Department will mail a copy of the additional changes to any person who testified or submitted comments during the public hearing (if one is requested), who submitted written comments during the 45-day public comment period, or who requested copies of additional changes. Please call the Department's regulations coordinator at (916) 327-4742 if you wish to receive a copy of any additional changes and you do not plan to present comments regarding the proposed regulatory action.

### **AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and has available for review upon request the text of the proposed regulations discussed in this notice, written in plain English; an initial statement of reasons, explaining the necessity for each regulatory change; and all the information upon which the proposed regulations were based. To obtain a copy, please call Mary Conway at (916) 327-4742 or write to her at the address shown on the first page of this notice. If you received this public notice in the mail, the text of the proposed regulation and the initial statement of reasons were enclosed. The proposed

regulations and initial statement of reasons are also available on the Department's web site at <http://www.adp.ca.gov> .

**PERSON TO CONTACT FOR ADDITIONAL INFORMATION:**

The Department's contact for this regulation package is Mary Conway, the Department's Regulations Coordinator, at (916) 327-4742. Virginia Clark, Manager of the Narcotic Treatment Program Licensing Branch, is the back up contact. Questions regarding the policy contained in the proposed regulatory action should be directed to Virginia Clark at (916) 327-3726.

**FINAL STATEMENT OF REASONS:**

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, please call Mary Conway at (916) 327-4742. The final statement of reasons will also be posted on the Department's web site at <http://www.adp.ca.gov>.

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**

**Title 9, California Code of Regulations, Division 4  
Chapter 4, Subchapter 2, Article 1  
Adoption of Sections 10056 and 10057**

**Licensing Fees and Administrative Review of Licensing Actions**

**Text of Proposed Regulations**

**ADOPT NEW SECTION 10056 AS SHOWN BELOW:**

**§ 10056. Licensing Fees.**

- (a) The Department shall assess annual licensing fees to cover the cost of licensing all narcotic treatment programs (NTPs) except those which are operating under the auspices of a governmental entity.

**NECESSITY: Needed to implement HSC 11839.3 and 11839.7 by providing regulatory authority to assess annual licensing fees. Exception needed to clarify which NTPs are not required by statute to pay licensing fees.**

- (b) The Department shall assess the following types of licensing fees:
- (1) An initial application fee for all programs, including components such as medication units;
  - (2) An annual license renewal fee for all programs;
  - (3) A slot fee for all programs, based on the patient capacity of each program;
  - (4) A change of ownership fee for programs which have changed ownership;
  - (5) A relocation fee for programs which have changed location;
  - (6) A follow-up visit fee to determine if the program is in compliance with the regulations in this Chapter, following correction of a deficiency.

**NECESSITY: Needed to implement, interpret, and make specific HSC 11839.3 and 11839.7 by clarifying what fees are included in the annual NTP licensing fee**

- (c) The Department shall compute licensing fees for every fiscal year (i.e., July 1st through June 30th of the following calendar year.)

**NECESSITY: Needed to implement, interpret, and make specific HSC 11839.3 and 11839.7 by clarifying the time period to be covered by the annual license fee**

(d) The Department shall increase licensing fees by the lower of excess cost or CPI for the most recent fiscal year.

(1) “Excess cost” means the percentage by which actual cost exceeds revenue collected from NTP licensing fees. Actual cost shall include staff salaries and benefits, operating expenses, and indirect costs related to licensing narcotic treatment programs (except those operating under the auspices of a government entity).

(2) “CPI” means the percentage increase in the Consumer Price Index as shown in the “Consumer Price Indices for All Urban Consumers for California” for the most recent fiscal year, which is available from the Economic Research Unit of the State Department of Finance.

**NECESSITY: Needed to implement, interpret, and make specific HSC 11839.7 by clarifying how licensing fees shall be increased. CPI or excess cost were chosen to keep fees as low as possible while ensuring that they cover the Department’s cost for licensing NTPs.**

(e) To determine whether to base licensing fees on the lower of excess cost or CPI, the Department shall first determine the amount of excess cost by subtracting the total amount of revenue collected from NTP licensing fees from total actual cost.

For example: If total actual cost equals \$1,000 and total revenue collected from NTP licensing fees equals \$900, the amount of actual cost exceeding revenue would equal \$100.

(1) The Department shall determine the percentage of cost exceeding revenue (i.e. excess cost) by dividing the amount of actual cost exceeding revenue for the most recent fiscal year by total actual cost.

For example: \$100 divided by \$1,000 equals 10%.

(2) The Department shall compare the resulting percentage to the percentage of CPI increase over the same time period to determine which is lower.

For example: Based on the calculations used in the example in this subsection, excess cost equals 10%, while CPI for the same fiscal year is lower at 1%. Thus, if the most recent fiscal year application fee were \$100, the Department would multiply that amount by the CPI increase of 1% to compute the current licensing fee of \$101.

**NECESSITY: Needed to implement, interpret, and make specific HSC**

**11839.7 by clarifying how Department shall determine whether excess cost or CPI is lower**

- (f) By July 30th of each year, beginning in 2006, the Department shall compute the licensing fees for the current fiscal year using the computation described in (e) of this regulation.

**NECESSITY: Needed to implement, interpret, and make specific HSC 11839.7 by clarifying when licensing fees shall be computed**

- (g) By August 30th of each year, beginning in 2006, the Department shall provide written notice to every licensed narcotic treatment program of the licensing fee for the current fiscal year. The written notice shall provide the data used for computing the licensing fees. The Department shall also include such data as part of the licensing application for new narcotic treatment programs.

**NECESSITY: Needed to implement, interpret, and make specific HSC 11839.7 by ensuring that providers understand how their licensing fee was computed.**

- (h) The Department has not increased licensing fees since fiscal year 1994-95. The Department shall increase licensing fees beginning with fiscal year 2006-07 to cover the Department's actual cost of licensing NTPs. Beginning with fiscal year 2006-07 the Department shall also include in the licensing fee a prorated amount to cover the actual cost of licensing programs between 1995-96 and 2004-05.

Using the formula shown in (e) of this regulation, the Department shall calculate what the annual licensing fee should have been for each year between fiscal year 1995-96 and fiscal year 2004-05 if the Department had increased fees annually to cover the cost of licensing NTPs. The Department shall add the total cumulative increase for all years between fiscal year 1995-96 and fiscal year 2004-05. The total shall be divided into thirds and prorated over the next three (3) fiscal years in order to make up the difference, as shown below:

- (1) The licensing fee for 2006-07 shall be the total of:
- (A) The licensing fee for fiscal year 2005-06, plus
  - (B) The lower of excess costs or CPI for fiscal year 2005-06, plus
  - (C) One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2005-06 application fee was \$100, the lower of excess cost or CPI were 1 percent or \$1, and one third of the accumulated increase were \$10, the fiscal year 2006-07 application fee would be the total of \$100, plus \$1, plus \$10, which equals \$111.

- (2) The licensing fee for 2007-08 shall be the total of:



- (A) The licensing fee for the most recent prior fiscal year (2006-07), plus
- (B) The lower of excess cost or CPI for fiscal year 2006-07, plus
- (C) One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2006-07 application fee were \$200, the lower of excess cost or CPI were 1 percent or \$2, and one third of the accumulated increase were \$10, the fiscal year 2007-08 application fee would be the total of \$200, plus \$2, plus \$10 which equals \$212.

- (3) The licensing fee for 2008-09 shall be the total of:

- (A) The licensing fee for the most recent prior fiscal year (2007-08), plus
- (B) The lower of the percentage of excess cost or CPI for fiscal year 2007-08, plus
- (C) One third of the total computed pursuant to (h) of this regulation.

For example: If the fiscal year 2007-08 application fee were \$300, the lower of excess cost or CPI were 1 percent or \$3, and one third of the accumulated increase were \$10, the fiscal year 2008-09 application fee would be the total of \$300, plus \$3, plus \$10, which equals \$313

- (4) The licensing fee for fiscal year 2009-10 and every year thereafter shall be the total of the licensing fee for the most recent prior fiscal year plus the lower of the percentage of excess cost or CPI for fiscal year 2008-09.

For example: If the fiscal year 2008-09 application fee was \$400 and the lower of excess cost or CPI were 1 percent or \$4, the fiscal year 2009-10 application fee would be the total of \$400, plus \$4, which equals \$404.

**NECESSITY: Increase needed to comply with HSC 11839.7, which requires the licensing fee charged to be at a level sufficient to cover all departmental costs associated with licensing. Increase divided into thirds and prorated over three years to avoid economic burden on providers.**

- (i) Applicants for licensure shall attach the application fee to their application for licensure. The Department shall terminate its review of the application if the applicant fails to attach the required application fee. The Department shall not refund the application fee if it denies the application.

**NECESSITY: Needed to implement HSC § 11839.10, to encourage payment**

**of application fees.**

- (i) The licensee may pay licensing fees once annually or quarterly in arrears.

  - (1) If the licensee pays the total licensing fees once annually, he/she shall submit the amount of the total licensing fees to the Department by September 30th
  - (2) If the licensee pays the licensing fees in arrears, he/she shall submit one quarter of the total annual licensing fees to the Department by September 30th, December 31st, March 31st, and May 31st.
  - (3) If the licensee fails to submit the licensing fees in accordance with the requirements of (i)(1) or (i)(2) immediately above, the Department shall issue a written notice of deficiency by certified mail within five (5) days of the date payment was due. The notice of deficiency shall:

    - (A) Notify the licensee that he/she has failed to pay licensing fees in accordance with the requirements of this regulation;
    - (B) Specify the amount of the licensing fee due;
    - (C) State the date by which the licensing fee was due;
    - (D) Notify the licensee that his/her license shall not be renewed unless all fees have been paid by May 31st;
    - (E) Notify the licensee that the Department has assessed a civil penalty in the amount of \$100 per day for each day from the date the licensing fees were due until the date the licensee pays the licensing fees; and
    - (F) Notify the licensee that he/she may appeal civil penalties in accordance with Section 10057.

**NECESSITY: Needed to implement HSC 11839.7 by clarifying what will happen if licensee fails to pay licensing fees as required.**

NOTE: Authority cited: Sections 11755, 11835, 11839.3, 11839.5, and 11839.20 Health and Safety Code. Reference: Sections 11839.3, 11839.5, 11839.7, and 11839.10, Health and Safety Code.

**ADOPT NEW SECTION 10057 AS SHOWN BELOW:**

**§ 10057. Administrative Review of Licensing Actions.**

- (a) Licensees and applicants for licensure may appeal a notice of licensing action by forwarding a written request for review to the Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. As used in this regulation, "licensing action" means any administrative action taken by the Department which would adversely affect licensure of an NTP, such as denial of an application, denial of a request for renewal of licensure, assessment of a civil penalty, or suspension or revocation of licensure.

**NECESSITY: Needed to clarify how a licensee may initiate administrative review.**

- (b) The written request for review shall be postmarked within fifteen (15) working days of receipt of the written notice of licensing action. The written request for review shall:
- (1) Identify the statute(s) or regulation(s) at issue and the legal basis for the licensee's appeal;
  - (2) State the facts supporting the licensee's position; and
  - (3) State whether the applicant for licensure or licensee waives an informal conference and prefers to proceed directly with an administrative hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.

**NECESSITY: Needed to clarify why an administrative review is being requested. Fifteen (15) days chosen to allow time for request to be mailed.**

- (c) Failure to submit the written request for review, pursuant to Subsection (b) of this regulation, shall be deemed a waiver of administrative review and the action shall be deemed final.

**NECESSITY: Needed to allow the Department to terminate administrative review unless the licensee requests an appeal in a timely manner.**

- (d) Unless the licensee waived his/her right to informal conference, the Director or the Director's designee shall schedule an informal conference with the licensee, unless the Director or the Director's designee and the licensee agree to settle the matter based upon the information submitted with the request for review. The informal conference shall be scheduled within fifteen (15) days and held within forty-five (45) days of receipt of the request for review. If the licensee waived his/her right to informal conference, the Director or the Director's designee shall proceed in accordance with (l) of this regulation.

**NECESSITY: Needed to resolve administrative reviews informally in a timely manner.**

(e) Failure to schedule the informal conference within fifteen (15) working days or hold the informal conference within forty-five (45) days of the receipt of the request shall be deemed a withdrawal of the licensing action by the Department unless the licensee:

- (1) Fails to attend the conference as scheduled, in which case the appeal shall be considered withdrawn and the action shall be deemed final.
- (2) Waives the fifteen (15) or forty-five (45) working day requirement, or
- (3) Waives informal conference.

**NECESSITY: Needed to resolve administrative reviews in a timely manner.**

(f) At the informal conference the licensee shall have the right to:

- (1) Be represented by legal counsel.
- (2) Present oral and written evidence.
- (3) Explain any mitigating circumstances.

**NECESSITY: Needed to provide due process.**

(g) The representatives of the Department, who issued the notice of licensing action, shall attend the informal conference and present oral and/or written evidence and information in substantiation of the alleged violation.

**NECESSITY: Needed so that the Department can defend its licensing action and present reliable information.**

(h) The Department shall conduct the conference as an informal proceeding, rather than in the manner of a judicial hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code). The Department need not conduct the informal conference according to the technical rules relating to evidence and witnesses.

**NECESSITY: Needed to resolve the appeal informally in a timely manner.**

(i) Neither the licensee nor the Department shall have the right to subpoena any witness to attend the informal conference. However, both the licensee and the Department may present witness(s) to present evidence and information on its behalf at the conference.

**NECESSITY: Needed to provide due process.**

- (j) Either party at the informal conference may record the proceedings of the informal conference on audio tape.

**NECESSITY: Needed to provide an inexpensive transcript of the informal proceedings.**

- (k) The Director or his/her designee shall mail the decision to affirm, modify, or dismiss the notice of licensing action to the licensee, postmarked no later than ten (10) working days from the date of the informal conference. The decision shall specify the reason for affirming, modifying, or dismissing the notice of licensing action. A copy of the decision shall be transmitted to each party of the administrative review.

**NECESSITY: Needed so that licensee will be informed of the decision. Fifteen (15) days chosen as reasonable time to allow decision to be mailed.**

- (l) The decision from the informal conference shall include a statement from the Director or the Director's designee notifying the licensee of his/her right to further administrative appeal of the decision made at the informal conference. If the licensee is not satisfied with the decision of the informal conference, he/she may appeal the decision by requesting a formal administrative hearing in accordance with Chapter 5 (commencing with Section 11500) Part 1, Division 3, Title 2 of the Government Code.

- (1) If the licensee wishes to appeal the decision of the informal conference, he/she shall submit a written request to the Director of the Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814, postmarked no later than fifteen (15) working days from the date of receipt by the applicant for licensure or licensee of the informal conference decision or the notice of licensing action, as appropriate. Upon receipt of the request for appeal, the Department shall initiate administrative review and request that the matter be set for hearing. The Department shall notify the licensee of the time and place of the hearing.

- (2) Failure of the licensee to submit the written request for an administrative hearing as specified in (l)(1) immediately above shall be deemed a waiver of further administrative review and the decision of the Director or the Director's designee shall be deemed the final decision of the Department.

- (3) In the event the licensee appeals the Department's proposed assessment of civil penalties, collection of the civil penalties shall be subject to the outcome of the final administrative appeal.

- (4) A licensing action shall be deemed final if:

- (A) The licensee fails to appeal the licensing action in a timely manner, pursuant to Subsections (c) and (m)(2) of this regulation; or

- (B) A final determination is made in accordance with this regulation or, if applicable, with Section 11517 of the Government Code.
- (5) After the licensing action is deemed final, the licensee shall pay any civil penalties to the Department within sixty (60) days of receipt of notice of final adjudication. Failure to pay the civil penalty within sixty (60) days of receipt of the notice of final adjudication shall result in revocation of the license pursuant to Section 10090.

**NECESSITY: Needed to provide due process by offering a formal review by an objective party.**

NOTE: Authority cited: Sections 11755 and 11839.12, Health and Safety Code. Reference: Section 11839.3, 11839.7, and 11839.12, Health and Safety Code; and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.